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# Options for Restructuring the Alaska Human Resource Investment Council With Consideration of State and Federal Guidelines

Presented to the Alaska Human Resource Investment Council

By Michael Brustein

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**& BRUSTEIN  
MANASEVIT**  
ATTORNEYS AT LAW

3105 South Street, NW  
Washington, DC 20007

phone 202.965.3652

fax 202.965.8913

email [bruman@bruman.com](mailto:bruman@bruman.com)

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Brustein & Manasevit is actively involved with the development and implementation of workforce development legislation, and has advised nearly all 50 states on education, training, welfare-to-work, and/or School-to-Work initiatives. The firm has worked closely with State and local workforce development boards, private industry councils, human resource investment councils, State job training coordinating councils, and State and local School-to-Work partnerships. Michael Brustein has written extensively on the various workforce development legislative initiatives and has appeared as keynote speaker on the impact of Federal and State changes to workforce development legislation, and is certified as a technical assistance expert for the Federal School-to-Work office. Brustein & Manasevit provides comprehensive consulting and legal services to a broad array of State and local agencies transitioning to a consolidation of workforce development programs (the Workforce Investment Act, the Carl D. Perkins Vocational and Technical Education Act, the Adult Education and Family Literacy Act, the School-to-Work Opportunities Act).

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In accordance with the scope of services outlined in the contract with the Alaska Human Resource Investment Council (AHRIC), we reviewed applicable State and Federal laws and practices in order to recommend the most efficient and effective composition of the AHRIC. In addition, we analyzed the ability of the AHRIC to serve as the primary planning and coordinating entity for vocational education under State and Federal law.

**AHRIC as Primary Planning and Coordinating Entity**

As an initial consideration, we analyzed the Alaska statutes governing the administration of vocational education programs in the State and reviewed the Federal requirements for the administration of such programs under the Perkins Act. As discussed below, the State and Federal provisions limit the AHRIC's ability to assume full responsibility for planning and coordinating vocational education programs.

Under Alaska law, the AHRIC must act as the "lead State planning and coordinating entity" for the Federal vocational and technical education program (Carl D. Perkins Vocational and Applied Technology Education Act, 20 USC 2301 *et seq.*) and all State laws involving vocational education. AS 23.15.575. The State Board of Education, however, acts as the sole State agency or "State eligible agency" for vocational education programs authorized under the Perkins Act. AS 14.35.020.

The Perkins statute defines "State eligible agency" as the State Board designated or created consistent with State law as the sole State agency responsible for the coordination of vocational and technical education. (Perkins, Section 3). The Act assigns to this "State eligible agency" four nondelegable responsibilities. These four responsibilities are:

- (1) Coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this title, including preparation for nontraditional training and employment;
- (2) Consultation with the Governor and appropriate agencies, groups, and individuals including parents, students, teachers, representatives of businesses, labor organizations, eligible recipients, State and local officials, and local program administrators, involved in the planning, administration, evaluation, and coordination of programs funded under Perkins;
- (3) Convening and meeting as an eligible agency (consistent with State law and procedure for the conduct of such meetings) at such time as the eligible agency determines necessary to carry out the eligible agency's responsibilities under Perkins, but not less than 4 times annually; and
- (4) The adoption of such procedures as the eligible agency considers necessary to

- (i) implement State level coordination with the activities undertaken by the State boards under section 111 of Public Law 105-220 (the Workforce Investment Act), and
- (ii) make available to the service delivery system under section 121 of Public Law 105-220 within the State a listing of all school dropout, postsecondary, and adult programs assisted under Perkins.

Except with respect to these four responsibilities, the State eligible agency may delegate any of its other responsibilities to one or more State agencies. (Perkins Act, Section 121(a)(2)).

The directives of the Federal law must be reconciled with the instructions of the Alaska legislature. State law mandates that the AHRIC be the lead State planning and coordinating entity for vocational education, but assigns responsibility to the State Board of Education as the “State eligible agency.” Federal law stipulates that coordination for the development of the State plan rests with the State Board and cannot be delegated.

Therefore, absent a State legislative amendment to reassign “State eligible agency” status to the AHRIC, the State Board of Education must retain overarching authority for administration and coordination of the development of the State plan and remains ultimately liable for the proper expenditure of the Federal funds. However, the State Board may delegate to the AHRIC all day-to-day administrative responsibilities, as well as the responsibility to implement the Federal law. One could reasonably infer from such a delegation that the State Board continues to serve as the lead State agency for planning and coordination, even though the AHRIC would maintain day-to-day control. It is certainly within the power of the Alaska State Legislature to amend AS 14.35.010, 14.35.020, 14.35.025, and 14.35.030, and thus reassign the overall planning and coordination responsibility to the AHRIC. Yet until such legislative reassignment is executed, the State Board must retain its lead role.

We note with interest that the State Legislature crafted a limitation on the oversight for planning and coordination. In listing the specific programs subject to AHRIC oversight, the State Legislature only listed the “non-public school portions” of vocational education and Tech Prep. (AS 23.15.575(d), (e), and (f)) We interpret this limitation on AHRIC oversight to reflect a validation by the legislature that the State Board would continue to have oversight responsibility for Perkins planning and coordination.

It should also be emphasized that the U.S. Department of Education will not recognize the AHRIC as the State eligible agency absent a change in State law. The State Board has historically been the custodian of the Perkins funds and has the appropriate certifications required by the Education Department General Administrative Regulations (EDGAR) on file. Accordingly, the Department will look to a formal rescission of this authority prior to recognizing the AHRIC as a lead agency.

Recently, the Governor of Michigan unilaterally assigned State eligible agency status to the Governor’s State Workforce Investment Board. The Federal office challenged this transition because it was effectuated without State legislative action or a formally executed Order and

Directive from the Governor. The Department of Education is carefully reviewing any shift in eligible agency designations and Alaska should expect similar scrutiny.

It is my recommendation that the AHRIC request the State legislature to repeal AS 14.35.020 and assign the “State eligible agency” status to the AHRIC effective July 1, 2001. Such a change would be consistent with the current AHRIC mandate to serve as the lead State planning and coordinating agency for vocational and technical education.

### **Minimal Membership Required**

The AHRIC was created through the enactment of AS 44.19.620-44.19.627 in 1995. The Council was established pursuant to the 1992 amendments to the Job Training Partnership Act (JTPA). The AHRIC was charged with acting as the lead State planning and coordinating entity for programs administered under JTPA, the Adult Education Act, the Wagner-Peyser Act, the Job Opportunities and Basic Skills Training Program, the employment program under the Food Stamp Act of 1977, and the Federal programs designated as successors to the previously listed programs. The AHRIC also replaced the State Council on Vocational Education (SCOVE) that had been established in 1968.

On August 7, 1998, Congress passed the Workforce Investment Act of 1998 (WIA) in an effort to completely restructure the nation’s Federal job training programs. The WIA repealed JTPA and outlined a new workforce development system comprised of State and local policy boards. Specific membership requirements for these boards are outlined in the law. However, Congress also included provisions to grandfather HRICs and PICs established under JTPA if they met certain criteria.

Since the AHRIC (1) was established pursuant to the Job Training Partnership Act, (2) was in existence on December 31, 1997, and (3) included representatives of labor organizations, the Council was eligible for “alternative entity” status under Section 111(e) of the WIA and was grandfathered into the new workforce development system. As a result, Alaska was not required to appoint a new State Workforce Investment Board that met the detailed membership requirements of Section 111 of the WIA. Instead, the AHRIC, with its current membership structure, remains eligible to serve as the State policy board under the WIA.

Section 111(b)(1) of the WIA outlines the following required membership on a State Board:

- The Governor
- Two members of each chamber of the State legislature
- Representatives of business in the State who
  - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards
  - Represent businesses with employment opportunities that reflect the employment opportunities of the State, and

- Are appointed from among individuals nominated by business organizations and business trade associations
- Chief elected officials (representing both cities and counties, where appropriate)
- Representatives of labor organizations, who have been nominated by State labor federations
- Representatives of individuals and organizations that have experience with respect to youth activities
- Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the State
- The lead State agency officials with responsibility for the programs and activities that are described in section 121(b) and carried out by one-stop partners; and in any case in which no lead State agency official has responsibility for such a program, service, or activity, a representative in the State with expertise relating to such program, service, or activity
- Such other representatives and State agency officials as the Governor may designate, such as the State agency officials responsible for economic development and juvenile justice programs in the State

The majority of board members must be from the category of representatives of business in the State. The membership categories outlined above will result in different State Board sizes depending on the governing agency structure. Specifically, Section 111(b)(1)(C)(vi) states that the membership shall include “the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) [required one-stop partner programs] and carried out by one-stop partners.” Therefore, the minimum number of members required to serve on a fully compliant WIA board will depend on the number of agencies in the State with lead responsibility for the following programs:

1. Programs authorized under Title I of the WIA
2. Programs authorized under the Wagner-Peyser Act
3. Adult education and literacy programs authorized under Title II of the WIA (the Adult Education and Family Literacy Act)
4. Programs authorized under Title I of the Vocational Rehabilitation Act of 1973
5. Welfare-to-Work Programs
6. Activities authorized under Title V of the Older Americans Act
7. Postsecondary vocational education activities authorized under the Perkins Act
8. Activities authorized under Chapter 2 of Title II of the Trade Act of 1974
9. Activities authorized under 38 USC 41 (Veterans programs)
10. Employment and training activities carried out under the Community Services Block Grant Act

11. Employment and training activities carried out by the Department of Housing and Urban Development; and
12. Programs authorized under State unemployment compensation laws

From our review, the following five State agencies have lead responsibility for the above programs in Alaska:

- Department of Labor and Workforce Development
- Department of Education and Early Development
- Department of Health and Social Services
- Department of Community and Economic Development
- University of Alaska

With at least five agency representatives on the board, the total number of non-business members would be eighteen (18). Therefore, in order to have a majority of members from the private sector, an additional nineteen (19) members must be added. The result is a minimum of thirty-seven (37) members for a fully compliant WIA board in Alaska. This assumes that the State entities will represent more than one partner program. It also assumes that the agency that has lead responsibility for the Vocational Rehabilitation program also administers the part of the State vocational rehabilitation plan under which vocational rehabilitation services are provided to blind individuals.<sup>1</sup>

The AHRIC membership has been capped at twenty-six (26) since its creation. This cap is significantly below the minimum membership that would be required if a fully compliant WIA board was established. It is important to note that any significant change to the current AHRIC membership would result in the loss of its “alternative entity” or “grandfathered” status and would require the appointment of a fully compliant WIA board.

According to the WIA Regulations issued by the Department of Labor on August 11, 2000, a significant change includes any significant change in the organization of the board or in the categories of entities represented on the board that requires a change to the board’s charter. Such a change would include adding members to represent groups not previously represented on the Board. A significant change is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a youth council) are added, or when a member is added to fill a vacancy created in an existing membership category.

The current membership of the AHRIC is substantially similar to the required membership of a State Board under Section 111 of the WIA. We believe that the inclusion of the Commissioner of Education, a representative of the University of Alaska, and four additional education representatives (including one from secondary vocational education and one from postsecondary education) on the AHRIC ensures that the Council can effectively serve as the State’s primary

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<sup>1</sup> If this is not the case, then a separate individual from the stand-alone agency administering the program for blind individuals must serve on the board and the minimum number for the Alaska State Board would rise to thirty-five.

planning and coordinating entity for vocational education. Therefore, we recommend that you preserve the “alternative entity” status of the AHRIC. By avoiding any significant changes in the AHRIC membership, the Council can effectively serve as the planning and coordinating entity for the programs listed in AS 23.15.575, including both vocational education and WIA programs, with at least eleven fewer members than would be required under a newly appointed WIA board.

### **Other States’ Practices**

In developing this report, we reviewed the practices of other States to determine how they have accommodated the interests of vocational education within the workforce development system. While several States have submitted unified plans to the Department of Labor that include vocational education programs, in each case the State Department of Education continues to serve as the primary planning and coordinating entity for vocational education. The only example of the State HRIC or WIB serving as the primary planning and coordinating entity for vocational education that we discovered was Michigan. As discussed previously, Governor Engler decided to assign responsibility for vocational education programs to the newly appointed State Workforce Investment Board. This was met by resistance from the U.S. Department of Education, which required State legislation or an Executive Order to effectuate such a change. As a result, Michigan has yet to complete its restructuring of workforce development administration at the State level.

While vocational education programs continue to be administered by State Departments of Education, some States have made significant efforts to increase collaboration between vocational education programs and the workforce development system. Examples of such collaboration are outlined below:

- Vermont – In 1996, the Vermont Legislature formed a joint committee of the State Board of Education (SBE) and the Human Resource Investment Council (HRIC) for the purpose of making recommendations on the governance, organization and funding for technical education in Vermont. The Technical Education Steering Committee, formed in September 1996, was composed of over 30 members who represented the SBE and HRIC as well as representatives from schools, businesses, and other stakeholders. The committee has issued various reports and helped to develop the State Perkins plan, which was submitted as part of a State Unified plan under the WIA. Under the State plan, vocational education programs continue to be administered by the Vermont Department of Education.
- Pennsylvania – A 1997 Executive Order established the Pennsylvania Workforce Investment Board. Pennsylvania began collaborating among agencies prior to WIA enactment and, as a result, was able to lead the early implementation efforts. Pennsylvania submitted a unified plan that stressed collaboration across the five state agencies represented on the PA WIB: the Departments of Aging, Community and Economic Development, Education, Labor and Industry and Public Welfare, in partnership with private sector employers, trade associations, economic and workforce development practitioners, local elected officials, job seekers and community leaders. As

in Vermont, while increased collaboration among partner agencies has been a focus in the State, Pennsylvania's Department of Education continues to be the sole state agency responsible for the planning and coordination of vocational education.

- *New Jersey* - The delivery system for vocational education in New Jersey is managed at the state and local levels. At the state level, agencies include the Governor's Office of Management and Planning; the New Jersey State Board of Education; the departments of Education, Human Services, Corrections, Community Affairs, and Labor; the SETC; and the Commission on Higher Education. Regional and county coordination is a function of county offices of education, county correctional institutions, county or regional Workforce Investment Boards (WIBs), and regional Employment Services offices. At the local level, WIBs are in place to provide recommendations in matters of occupational demand, occupational competency requirements, and partnerships. The 1996 *Unified State Plan for New Jersey's Workforce Readiness System* established the framework for all workforce readiness programs in the state of New Jersey. Where appropriate, the recommendations from the various state level agencies have been incorporated into New Jersey's vocational education plan, which is part of the state's unified plan. The State's Perkins plan was produced by the NJ Department of Education, and reviewed, discussed, and endorsed by the New Jersey State Board of Education, acting as the State Board for Vocational Education.

## **Conclusion**

In summary, we recommend that you take the following actions:

1. Seek a State statutory change in order to allow the AHRIC to assume full planning and coordinating responsibility for vocational education programs.
2. Maintain alternative entity status of the AHRIC so that the Council can continue to act as the lead planning and coordinating entity for vocational education and WIA programs.